

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 02-0532  
SALES & USE TAX  
For The Tax Periods: 1999 -2001**

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**ISSUE**

**I. Sales Tax – Markup for long distance calls**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-4-6, IC 6-2.5-4-4, *Greensburg Motel v. Dept. of State Revenue*, 629 N.E.2d 1302 (Ind. Tax 1994).

The Taxpayer protests the Department's assessment of sales tax on the markup of long distance telephone services offered to its guests.

**STATEMENT OF FACTS**

Taxpayer is in the business of providing guest accommodations for periods of less than 30 days. As part of its hotel operations, Taxpayer purchases telephone services from both a local carrier and a long distance carrier and passes these services through to its guests. The guests are not charged for local calls, however they are billed for long distance calls based on the length, location, and time of call. They are billed in a single un-segregated amount which includes Taxpayer's cost plus a markup.

During the audit, the auditor made adjustments after she determined that Taxpayer failed to include in taxable sales the long distance markup billed to the customer. More facts supplied as necessary.

**I. Sales Tax: Markup for long distance calls**

**DISCUSSION**

During the audit, the auditor found that Taxpayer failed to include in taxable sales the long distance markup for telephone calls billed to the customer. Taxpayer argues that the markup contains additional costs on which sales tax has been paid.

"An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana," IC 6-2.5-2-1. Also, IC 6-2.5-4-6 provides:

- (a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber-optics, laser,

microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.

- (b) A person is a retail merchant making a retail transaction when the person:
  - (1) furnishes or sells an intrastate telecommunication service; and
  - (2) receives gross retail income from billings or statements rendered to customers.
- (c) Notwithstanding subsection (b), a person is not a retail merchant making a retail transaction when:
  - (1) The person provides, installs, construct, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication services described in subsection (a); or
  - (2) The person furnishes or sells the telecommunication services described in subsection (a) to another person described in this section or in section 5 of this chapter.

It is clear Taxpayer does not transmit messages, but, rather simply purchases telecommunication services from the long distance carrier and, in turn, permits guest to access the telecommunication services for a fee. Taxpayer, as purchaser rather than a seller of intrastate telecommunication services, is required to pay sales/use tax on telecommunication services purchased pursuant to the above referenced IC 6-2.5-2-1 and IC 6-2.5-4-6.

The fee charged by Taxpayer to its guests for access to the telecommunications services is also subject to sales/use tax to be collected by Taxpayer as provided by IC 6-2.5-4-4 and 45 IAC 2.2-4-8. 45 IAC 2.2-4-8, interpreting IC 6-2.5-4-4, states that every person renting or furnishing rooms, lodgings or other accommodations for periods of less than thirty (30) days must collect the gross retail tax on the gross receipts from such transactions. It further states,

The gross receipts subject to tax include the amount which represents consideration for the rendition of these services which are essential to the furnishing of the accommodation, and those services which are regularly provided in furnishing the accommodation. Such amounts are subject to tax even when they are separately itemized on the statement or invoice. *Id.*

In this case, Taxpayer's provision of access to telephone services for its guests is a service regularly provided in furnishing an accommodation by Taxpayer, hence, the fee for this is defined as gross receipts received from furnishing accommodations for periods of less than thirty (30) days and is subject to sales/use tax. While Taxpayer must pay sales/use tax to the telecommunications provider, they are not required to collect sales tax on the reimbursement of the long distance charge. However, the markup is considered to be a service charge that is in fact essential to and regularly provided in the furnishing of the accommodation. As such, the markup charge on long distance telephone calls is subject to the collection of sales tax.

Taxpayer contends that a portion of the markup consists of other costs such as call accounting software, special computers, telephone equipment and wiring which sales tax was also paid. They state that this is tax pyramiding and that only the markup minus these associated costs should be taxed.

In *Greensburg Motel v. Dept. of State Revenue*, 629 N.E.2d 1302 (Ind. Tax 1994), the taxpayer, who was a motel owner and operator, argued that tax pyramiding occurs in its industry because they are providing a taxable service and are not exempt from sales tax on their purchases of consumable items, non-consumable items, and utilities. The Court stated, "Not every purchase incorporated into service is exempt from sales tax."

While IC 6-2.5-4-6(c) explicitly excludes Taxpayer as a retail merchant making a retail transaction for providing telecommunications services, there is no such provision for Taxpayer with regards to the additional costs associated with the long distance service.

### **FINDING**

The Taxpayer's protest is respectfully denied.